



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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Jacksonville, Florida 32216-0912

IN REPLY REFER TO:

41910-2006-F-0480

April 18, 2006

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Mr. James C. Duck
Chief, Planning Division
U.S. Army Corps of Engineers
P.O. Box 4970
Jacksonville, Florida 32232

FWS Log Number: 41910-2006-F-0480

Dear Mr. Duck:

The U.S. Fish and Wildlife Service (Service) has reviewed the plans submitted for the re-nourishment of additional areas in Pinellas County. The project has the potential to affect two species of sea turtles. Florida's beaches function as nesting habitat for the threatened loggerhead (*Caretta caretta*) as well as the endangered green turtle (*Chelonia mydas*).

This letter is a modification of the biological opinion written on February 28, 2005 to include additional areas for re-nourishment on North Treasure Island (R-Monument 126 to R-Monument 127), Sunset Beach (R-Monument 136 to R-Monument 141), Long Key (R-Monument 144 to R-Monument 148) and Pass a Grille (R-Monument 160 to R-Monument 165). Information for these additional areas is similar to the description of the project as described in the Environmental Assessment written in May 16, 2002, received on April 4, 2006, telephone conversations on April 4 and 6, 2006 with Eric Gasch of the USACOE, and other sources of information. A complete administrative record of this consultation is on file at Jacksonville Field Office.

The proposed project will place approximately 1.6 million cubic yards of beach compatible sand from Egmont Channel Shoal burrow area. This area consists of large shallow areas of sand. This burrow site has been used in the previous 1998 nourishment project. It is located approximately 14 miles SSE of Sand Key and 0.6 miles north of Egmont Key. The fill material will be similar in both coloration and grain size distribution to the native beach. The fill material will be free of construction debris, rocks, or other foreign matter and will not contain, on average, greater than 10 percent fines (i.e., silt and clay) (passing the #200 sieve) and will not contain, on average, greater than 5 percent coarse gravel or cobbles, exclusive of shell material (retained by the #4 sieve). The sand will be dredged and trucked to the nourishment site.

The Service has described the action area to include an additional 9.5 miles of Pinellas County beaches including North Treasure Island (R-Monument 126 to R-Monument 127), Sunset Beach (R-Monument 136 to R-Monument 141), Long Key (R-Monument 144 to R-Monument 148) and Pass

a Grille (R-Monument 160 to R-Monument 165). The renourishment for the additional areas will begin after the 2006 sea turtle nesting season.

The "Reasonable and Prudent Measures" and "Terms and Conditions" listed in the Biological Opinion dated February 28, 2005, are applicable and apply to the additional nourishment areas. This letter is provided in accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA).

Incidental Take statement

Section 9 of the Act and Federal regulation pursuant to section 4(d) of the Act prohibit the take of endangered or threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined by the Service as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited under the Act provided that such taking is in compliance with the terms and conditions of this incidental take statement.

The measures described below are non-discretionary, and must be implemented by the Corps so that they become binding conditions of any grant or permit issued to the applicant, as appropriate, for the exemption in section 7(o)(2) to apply. The Corps has a continuing duty to regulate the activity covered by this incidental take statement. If the Corps (1) fails to assume and implement the terms and conditions or (2) fails to require the applicant to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, the Corps must report the progress of the action and its impacts on the species to the Service as specified in the incidental take statement 50CFR 402.14(i)(3).

Amount of Extent of Incidental Take

The Service has reviewed the biological information and other information relevant to this action. Based on this review, incidental take is anticipated for (1) all sea turtle nests that may be constructed and eggs that may be deposited and missed by the nest survey and egg relocation program within the boundaries of the proposed project; (2) all sea turtle nests deposited during the period within the nest survey and egg relocation program is not required to be in place within the boundaries of the proposed project; (3) harassment in the form of disturbing or interfering with female turtles attempting to nest within the construction area or on adjacent beaches as a result of construction activities; (4)

disorientation of hatchling turtles on beaches adjacent to the construction area as they emerge from the nest and crawl to the water as a result of project lighting; (5) behavior modification of nesting females due to escarpment formation within the project area during a nesting season, resulting in false crawls or situations where they choose marginal or unsuitable nesting areas to deposit eggs; (6) all nests destroyed as a result of escarpment leveling within the nesting season when such leveling has been approved by the Fish and Wildlife Service; and (7) reduced hatching success due to egg mortality during relocation and adverse conditions at the relocation site.

Incidental take is anticipated for only 9.5 miles of beach that have been identified for sand placement. The Service anticipated incidental take of sea turtles will be difficult to detect for the following reasons: (1) the turtles nest primarily at night and all nests are not found because (a) natural factors, such as rainfall, wind, and tides may obscure crawls and (b) human-caused factors, such as pedestrian and vehicular traffic, may obscure crawls, and result in nests being destroyed because they were missed during a nesting survey and egg relocation program; (2) the total number of hatchlings per undiscovered nest is unknown; (4) an unknown number of females may avoid the project beach and be forced to nest in a less than optimal area; (5) lights may disorient an unknown number of hatchlings and cause death; and (6) escarpments may form and cause an unknown number of females from accessing a suitable nesting site. However, the level of take these species can be anticipated by the disturbance and beach nourishment of suitable turtle nesting beach habitat because: (1) turtles nest within the project site; (2) beach nourishment will likely occur during a portion of the nesting season; (3) the nourishment project will modify the incubation substrate, beach slope, and sand compaction; and (4) artificial lighting will disorient nesting females and hatchlings.

Terms and Conditions- Summation Paragraph

The reasonable and prudent measures, with their implementing terms and conditions, are designed to minimize the impact of incidental take that might otherwise result from the proposed action. The amount or extent if incidental take for sea turtles will be considered exceeded if the project results in more than a one-time placement of sand of the 9.5 miles of beach proposed for nourishment. If during the course of the action, the level of incidental take is exceeded; such incidental take represents new information requiring reinitiation on consultation and review of the reasonable and prudent measures provided. The Federal agency must immediately provide an explanation of the causes of the taking and review with the Service the need for possible modification of the reasonable and prudent measures.

REINITIATION - CLOSING STATEMENT

This concludes formal consultation on the action outlined in the request. As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the

listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

This concludes Section 7 consultation with the Service for the re-nourishment of additional areas in Pinellas County. Thank you for your cooperation in the effort to protect nesting sea turtles.

Fish and Wildlife Resources

The proposed sand placement is also in an area of shorebird nesting. The Service recommends the following conditions for shorebird protection.

Conditions for Shorebird Protection

1. Shorebird surveys should be conducted by trained, dedicated individuals using accepted, appropriate ecological survey procedures (for example, see "*Breeding Season Population Census Techniques for Seabirds and Colonial Waterbirds Throughout North America*" at URL: <http://www.mp2-pwrc.usgs.gov/cwb/manual/>).
 - 1.1 The shorebird nesting season generally is March – August, but some nesting may occur through September.
 - 1.2 Nesting season surveys shall begin on March or 45 days prior to construction commencement, whichever is later, and be conducted daily throughout the construction period.
2. Within the project area, the permittee shall establish a site-specific buffer around any location where shorebirds have been engaged in courtship or nesting behavior, or around areas where piping plovers occur or winter migrants congregate in significant numbers. Any and all construction activities, including movement of vehicles, should be prohibited in the buffer zone.
 - 2.1 The width of the buffer zone shall be increased if birds appear agitated or disturbed by construction or other activities in adjacent areas.
 - 2.2 Designated buffer zones must be posted with clearly marked signs around the perimeter. These markings shall be maintained until nesting is completed or terminated, the chicks fledge, or piping plovers or winter migrants depart.
 - 2.3 No construction activities or stockpiling of equipment shall be allowed within the buffer area.

This concluded consultation with the Service for the Pinellas County Nourishment Project. Thank you for your cooperation in the effort to protect threatened and endangered sea turtles and their

nesting habitat. We are available to meet with agency representatives to resolve outstanding resource issues with this project. If you have any questions, please contact Ann Marie Lurtisen at (727) 570-5400 ext. 233.

Sincerely,

A handwritten signature in cursive script, appearing to read "David L. Hankla".

for David L. Hankla
Field Supervisor